

VETERINARY MEDICAL BOARD

INITIAL STATEMENT OF REASONS

Hearing Date: January 16, 2007

Subject Matter of Proposed Regulations:

To create a limited term eligibility window for unregistered assistant with a minimum of 5-years of directed clinical experience to take the state licensing examination for registered veterinary technicians (RVT).

Section(s) Affected: 2068.7

Specific Purpose of each adoption, amendment, or repeal:

Section 2068.7

Adopt Section 2068.7

The specific purpose of this regulatory proposal is to adopt a new regulation that would, in lieu of a prescribed education and training program, allow unregistered assistants with at least 5 years of work experience eligibility to apply to sit for the exam during a limited window of time (12 months), provided that their supervising veterinarian(s) certify to their acquisition of specific entry-level skills necessary to perform as Registered Veterinary Technicians.

Factual Basis/Rationale

Section 2068.7

In April 2006, the Veterinary Medical Board held a public hearing on proposed RVT Job Tasks. Due to the potential for harm to pets and humans in the use of chemotherapy drugs and the potential for diversion of controlled substances, the Board was proposing to restrict access to these drugs by limiting the administration of chemotherapy drugs and controlled substances to licensees, e.g., veterinarians and/or registered veterinary technicians (RVT). At the hearing, there were a significant number of veterinarians who testified that the insufficient number of RVTs in California would result in more harm than good for animals and consumers because there were not enough RVTs to administer pain medication (controlled substances) to animals as needed including after hours and on weekends.

Shortly after this hearing, the Board discovered that there was an existing restriction in the Health and Safety Code that limited the delegation of the administration of all controlled substances to immediate supervision. A veterinarian could delegate such administration only if the task was performed in the "immediate physical presence" of the licensee. Although the Board believes that access to controlled substances should be limited to licensed personnel, it felt that the "immediate" supervision was too restrictive on veterinarians and it promulgated regulations to allow direct and indirect supervision for RVTs and direct supervision for lay staff. Subsequent to the Board's action, the California Veterinary Medical Association (CVMA), based on input from its members outlining the shortage of RVTs, sponsored a bill that becomes effective January 1, 2008, that permits access to controlled substances by lay staff, under "indirect" supervision (when there are no licensees on the premise). The fact that controlled substances can be dangerous and are highly susceptible to diversion was not debated in the Legislative committees. The rationale for allowing access to lay staff when there is no veterinarian on the premises was solely based on the current shortage of RVTs. The law has a "sunset" clause so is in effect only until 2012.

The question is what better protects consumers and their pets – allowing access to all levels of controlled substances to lay staff when there may be no supervising licensees on the hospital premises or being proactive in creating a way for veterinarians to work with their lay staff so they can take the State Board Exam for RVTs, complete a background check, become registered and accountable and be able to fully participate in the professional animal health care team.

The U.S. Drug Enforcement Administrations (DEA) regulation, under the Controlled Substances Act, outline the many restrictions related to dispensing and administration of controlled substances. One of these restrictions is related to employees who have had a felony drug conviction.

Title 21 of the Code of Federal Regulations, Part 1300, section 1301.76(a) states: "The registrant (licensees with a DEA registration) shall not employ, as an agent or employee who has access to controlled substances, any person who has been convicted of a felony offense relating to controlled substances or who, at any time, had an application for registration with the DEA denied, had a DEA registration revoked or has surrendered a DEA registration for cause. For purposes of this subsection, the term "for cause" means surrender in lieu of, or a consequence of, any Federal or State administrative, civil or criminal action resulting from an investigation of the individual's handling of controlled substances."

The law that will be effective from January 1, 2008 through December 31, 2011, may be a good short-term solution of a current shortage of RVTs in veterinary medicine. As a long term solution, the Board believes that it is in the consumers' and the animals' best interest, to streamline the eligibility categories for registration of a veterinary technician and create a one time, 12 month, pathway for lay staff to apply for the state RVT exam, undergo a full State and Federal background check and become registered, rather than permanently allow full access to all levels of controlled substances to lay staff when there is no supervising licensee on the hospital premises.

The Board is proposing a one-time, limited term eligibility window (no more than 12 months) during which, in lieu of formal education, the Board would accept certification by supervising veterinarians as to the competency of those lay staff persons who had completed five (5) years of clinical experience and who, in the opinion of the veterinarian, were competent to sit for the California RVT exam. The primary motivation for proposing such a category is the Board's high level of concern regarding the delegation of the administration of controlled substances to lay staff, who may not have undergone a fingerprint clearance, under indirect supervision, i.e., when there is no supervising licensee on the premises.

Underlying Data

RVT Committee meeting minutes, April 2006 – October 2007

Veterinary Medical Board meeting minutes, April 2006 – October 2007

Business Impact

This regulation will not have a significant adverse economic impact on businesses because it increases the authority of veterinarians.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.